IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

CRL.A.No. 875 of 2007()

SC.895/2005 of ADDL. SESSIONS COURT FAST TRACK -II, PALAKKAD

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APPELLANT:

A.DILEEPKUMAR
CONVICT NO.4503
CENTRAL JAIL, KANNUR

BY ADV. BABU P.C.[STATE BRIEF]

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24.7.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.875 OF 2007

Dated this the 24th day of July, 2007.

JUDGMENT

Appellant is the sole accused in S.C.No.895/2005 on the file of the Additional Sessions Court Fast Track-II, Palakkad. The charge against the appellant was that he was found transporting 720 liters of rectified spirit in a lorry bearing Registration No. KL 9A-7162 on 20.09.2000 at about 7.50 p.m without having any licence or permit. The brief case against the appellant was that the lorry in question was stopped at the Walayar check post and on verification by the Sales Tax Officials it was found that the lorry contained 15 sacks of vegetables and 22 cannas each containing 35 liters of rectified spirit underneath the vegetable sacks. The Sales Tax Officers after detecting the above contrabands, the lorry and the appellant were entrusted to the Excise Officials. The Excise Officials on inspection of the lorry found that no trip sheet was in the lorry and the driver, who drove the vehicle, was absconding. However, the appellant was found in the lorry and after preparing seizure mahazar – Ext.P1 and on questioning the appellant, it was found that 22 cannas contained 720 liters of rectified spirit out of which

samples were taken for analysis. After questioning the appellant, he was arrested and thereafter investigation has been completed by PW5 – the Excise Inspector and on getting the sample analysed by the public analyst it was reported that the sample contained 92% ethyl alcohol by volume and hence, charge has been filed. To prove the case against the appellant, prosecution examined six witnesses and relied on Exts.P1 to P9. After closing the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure. He denied his involvement in the offence as alleged by the prosecution and has stated that he was engaged in cleaning the lorry and he has no knowledge about the contents in the cannas. However, after considering the entire evidence, the trial court found the appellant guilty under Section 55(a) of the Abkari Act and he was convicted thereunder and sentenced to undergo R.I for nine years and to pay a fine of Rs.Ten lakhs and in default of payment of the fine, he shall undergo S.I for two years more. The judgment of the trial court is challenged in this appeal.

2. This appeal is filed through the jail authorities. As the appellant is not having a counsel of his own choice, a member from the State brief panel has been appointed to argue the case before this Court.

The main contentions raised by the counsel appearing for the appellant are as follows:

Firstly it is contended that the trial court committed a serious error in believing the evidence of PWs 1, 5 and 6 to prove that the appellant was found in possession of the contraband article. Secondly, it is contended that Pws 1 and 2, who are the witnesses examined as the occurrence witnesses out of whom PW2 had prepared the mahazar and seized the contraband article and had taken the same for analysis cannot be relied on as there was no independent evidence before the court to support the evidence of these witnesses. Thirdly it is contended that the sentence awarded against the appellant is excessive.

3. The prosecution case proved through the evidence of PWs 1 and 2 is that while the lorry bearing Registration No. KL 9A-7162 came to the Walayar sales tax check post on 20.9.2000 at about 7.30 p.m the lorry was stopped for checking. On inspection, it was found by the sales officers that the vehicle contained spirit. Hence, the vehicle was entrusted to the Excise Officers. PW2 was the Preventive Officer, who was at Walayar check post on the day of the

incident and he had given evidence before the court that the lorry was intercepted by the Sales Tax Officers and was taken into custody and on verification it was found that the lorry contained 22 cannas having 35 liters capacity and all those cannas contained rectified spirit. Hence, on preparing Ext.P1 mahazar the contraband article was seized and out of which the sample was also collected for chemical analysis. This witness has further stated before the court that the appellant was arrested on the same day itself and the evidence of PW2 was corroborated with that of the evidence of PW1. PW1 was a Preventive Officer of the Excise department, who was also present at the time of detection of the crime. Though Pws 3 and 4 were examined to prove the seizure of the contraband article, they denied the action taken by the Excise Officials in Ext.P1 mahazar. However PW4 admitted his signature in Ext.P1 mahazar. Pws 5 and 6 were the officials, who had continued the investigation and got the chemical report and filed the final charge before the court. On the the basis of the undefeated evidence of these witness, the trial court found that the prosecution had succeeded in proving that 22 cannas having the capacity of 35 liters each containing rectified spirit and that the appellant was the only person who was available in the lorry. Hence, the trial court fully accepted the evidence adduced by

the prosecution. In the above circumstances, the contentions raised by the counsel appearing for the appellant are not sustainable. The finding of the trial court regarding transporting of 720 liters of rectified spirit by the appellant was on evidence. Though the R.C book was seen in the lorry, the original owner of the lorry could not be identified. However, the lorry was also confiscated.

In the above circumstances, the only question left for consideration in this appeal is with regard to the question of sentence awarded against the appellant. The prosecution case itself is that the appellant was found transporting rectified spirit without having any proper license or permit under the provisions of the Abkari Act and the prosecution had succeeded in proving the same also. The trial court though considered the case set up by the appellant that he was only a cleaner, it imposed on him a penalty of 9 years R.I and Rs. Ten lakhs as fine. However, on considering the fact that the driver of the vehicle absconded and the original owner of the vehicle is not found, it is only proper for this Court to reduce the sentence awarded against the appellant. Accordingly, R.I for 9 years awarded against the appellant is reduced to 5 years and the fine is also reduced to Rs. 5 lakhs from Rs.10 lakhs with default sentence of payment of fine,

S.I for one year. The appellant is entitled for the benefit under Section 428 of Cr.P.C also.

With the above alterations, in all other respects the appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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